

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case Nos.: <b>08-O-13978-RAH</b>
	)	(08-O-14729; 09-O-11569)
<b>ANTHONY ALLEN BROCK</b>	)	
	)	<b>DECISION</b>
<b>Member No. 149768</b>	)	
	)	
<u>A Member of the State Bar.</u>	)	

**I. Introduction and Pertinent Procedural History**

This default matter was submitted for decision on February 14, 2011. Respondent **Anthony Allen Brock** is charged with 13 counts of misconduct. At the time of submission, the Office of the Chief Trial Counsel of the State Bar of California (“Office of the Chief Trial Counsel”) was represented in this matter by Deputy Trial Counsel Cindy McCaughey. Respondent did not participate in these proceedings.

The Office of the Chief Trial Counsel filed a Notice of Disciplinary Charges (“NDC”) against respondent on November 2, 2010. On that same day, a copy of the NDC was properly served on respondent in the manner set forth in rule 60 of the former Rules of Procedure of the State Bar of California<sup>1</sup> (“former Rules of Procedure”).<sup>2</sup>

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<sup>1</sup> Effective January 1, 2011, the Rules of Procedure of the State Bar of California were amended. Based on the court’s determination that injustice would otherwise result, the court applied the Former Rules of Procedure in this proceeding.

<sup>2</sup> Unless otherwise indicated, all documents were properly served pursuant to the former Rules of Procedure.

As respondent did not file a response to the NDC, the Office of the Chief Trial Counsel filed and properly served a motion for entry of default. Respondent subsequently failed to file a written response to the motion for entry of default, and, on February 9, 2011, the court issued an order of entry of default and involuntary inactive enrollment.<sup>3</sup> A copy of said order was properly served on respondent at his membership records address. This copy was subsequently returned to the court by the U.S. Postal Service as undeliverable.

The Office of the Chief Trial Counsel waived its right to a hearing, and this matter was submitted for decision on February 14, 2011. The court concludes that respondent was given sufficient notice of the pendency of this proceeding to satisfy the requirements of due process. (*Jones v. Flowers, et al.* (2006) 547 U.S. 220 [126 S.Ct. 1708, 164 L.Ed.2d 415].)

## **II. Findings of Fact and Conclusions of Law**

All factual allegations of the NDC are deemed admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Former Rules Proc. of State Bar, rule 200(d)(1)(A).)

### **A. Jurisdiction**

Respondent was admitted to the practice of law in California on December 4, 1990, and has been a member of the State Bar of California at all times since that date.

### **B. General Background – Suspension from the Practice of Law**

On or about June 12, 2008, the Supreme Court filed an order that respondent be suspended due to failure to pay his membership fees. On that date, a copy of the Supreme Court's order was mailed to respondent at his State Bar membership address. Respondent received the order.

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<sup>3</sup> Respondent's involuntary inactive enrollment pursuant to Business and Professions Code section 6007, subdivision (e), was effective three days after the service of this order by mail.

On or about June 18, 2008, the State Bar mailed notice to respondent that he would be suspended effective on or about July 1, 2008, if he did not pay his membership fees. Respondent received the notice from the State Bar.

Respondent did not pay his membership fees. Beginning on or about July 1, 2008, respondent was suspended from the practice of law pursuant to the order of the Supreme Court.

### **C. The Bayview Matter (Case No. 08-O-13978)**

#### **1. Findings of Fact**

On or about March 7, 2008, Bradford Banta (“Banta”), the Managing Member of Bayview Acquisitions, LLC (“Bayview”), employed respondent to represent Bayview in enforcing—in California—a judgment entered in Florida against property owned by the judgment debtor. On or about March 19, 2008, Brian D. Gottlieb (“Gottlieb”), Bayview’s Florida counsel, paid respondent \$750 in advanced fees and \$355 in advanced costs as requested by respondent.

On or about July 25, 2008, and during the time that he was a suspended member, respondent contacted Gottlieb by telephone and informed him that service had been made on the judgment debtor and that he was awaiting a response from the judgment debtor. In fact, respondent had not served any papers on the judgment debtor. At no time did respondent inform Banta, Bayview, or Gottlieb that he was not entitled to practice law.

When respondent spoke to Gottlieb on or about July 25, 2008, respondent knew that he was not entitled to practice law in California and concealed his status from Gottlieb. When respondent spoke to Gottlieb, he also knew that he had not served any papers on the judgment debtor in the Bayview case.

On or about August 27, 2008, Gottlieb attempted to contact respondent by telephone and learned that respondent’s telephone number was not in service. At no time did respondent

provide an accounting to Banta, Bayview, or Gottlieb for the \$750 in advanced fees and the \$355 in advanced costs received on behalf of Bayview.

Respondent did not provide any services of value to Bayview. Respondent did not earn any of the \$750 received in advanced fees to collect the judgment for Bayview. At no time did respondent refund any of the \$750 received in advanced fees.

Respondent dishonestly or with gross negligence misappropriated the \$355 in advanced costs received on behalf of Bayview.

## **2. Conclusions of Law**

### **a. Count One – Business and Professions Code, Section 6068, Subdivision (a) [Failure to Comply with Laws – Unauthorized Practice]<sup>4</sup>**

Section 6068, subdivision (a) provides that an attorney has a duty to support the laws of the United States and of this state. Section 6125 prohibits the practice of law by anyone other than an active attorney and section 6126 prohibits holding oneself out as entitled to practice law by anyone other than an active attorney.

By communicating with Gottlieb about collection of the Bayview judgment without informing Gottlieb that respondent was suspended from the practice of law, respondent held himself out as entitled to practice law and actually practiced law while he was not entitled, in willful violation of sections 6125 and 6126, and thereby failed to support the laws of the State of California in violation of section 6068, subdivision (a).

### **b. Count Two – Section 6106 [Moral Turpitude – Misrepresentation]**

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty, or corruption. While moral turpitude generally requires a certain level of intent, guilty knowledge, or willfulness, a finding of gross negligence will support such a charge where

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<sup>4</sup> All further references to section(s) are to the Business and Professions Code, unless otherwise stated.

an attorney's fiduciary obligations, particularly trust account duties, are involved. (*In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 410.)

By misrepresenting to Gottlieb that he had taken action to collect the Bayview judgment when he had not done so and by concealing his suspended status from Gottlieb, respondent willfully committed an act involving moral turpitude, dishonesty, and corruption in violation of section 6106.

**c. Count Three – Rules of Professional Conduct, Rule 4-100(B)(3) [Failure to Render Accounts]<sup>5</sup>**

Rule 4-100(B)(3) requires that an attorney maintain complete records and render appropriate accounts of all client funds in the attorney's possession. By not providing an accounting for the advanced fees and costs received on behalf of Bayview, respondent failed to render appropriate accounts to a client regarding all funds coming into respondent's possession, in willful violation of rule 4-100(B)(3).

**d. Count Four – Rule 3-700(D)(2) [Failure to Refund Unearned Fee]**

Rule 3-700(D)(2) requires an attorney whose employment has been terminated to promptly refund any part of a fee paid in advance that has not been earned. By not refunding any of the \$750 received in advanced fees to collect the judgment for Bayview after he became ineligible to represent Bayview, respondent failed to refund promptly any part of a fee paid in advance that has not been earned, in willful violation of rule 3-700(D)(2).

**e. Count Five – Section 6106 [Moral Turpitude – Misappropriation]**

By misappropriating the advanced costs received on behalf of Bayview, respondent committed an act involving moral turpitude, dishonesty, or corruption, in willful violation of section 6106.

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<sup>5</sup> All further references to rule(s) are to the current Rules of Professional Conduct of the State Bar of California, unless otherwise stated.

## **D. The Rixey Matter (Case No. 08-O-14729)**

### **1. Findings of Fact**

On or about June 26, 2008, J. Barbour Rixey (“Rixey”), a Virginia attorney, employed respondent—on a contingency fee basis—to enforce a Virginia court judgment against a judgment debtor who resided in California.

On or about July 16, 2008, and during the time that he was a suspended member, respondent contacted Rixey’s paralegal, G. Patricia Gentry (“Gentry”), by email requesting that Rixey advance \$215 in costs for the anticipated filing fees and services fees. At no time did respondent inform Rixey that he was not entitled to practice law. When respondent sent this email to Gentry, he knew that he was not entitled to practice law in California and concealed his status from Gentry.

On or about July 28, 2008, Rixey paid respondent \$215 in advanced costs pursuant to respondent’s request.

On or about October 6, 2008, Rixey attempted to contact respondent by telephone and learned that respondent’s telephone number was not in service and that email was returned by the server as not deliverable. Respondent dishonestly or with gross negligence misappropriated the \$215 in advanced costs received from Rixey.

### **2. Conclusions of Law**

#### **a. Count Six – Section 6068, Subdivision (a) [Failure to Comply with Laws – Unauthorized Practice]**

By communicating with Gentry about collection of the Virginia judgment without informing Gentry that respondent was suspended from the practice of law, respondent held himself out as entitled to practice law and practiced law in willful violation of sections 6125 and 6126, and thereby failed to comply with the laws of the State of California, in violation of section 6068, subdivision (a).

**b. Count Seven – Section 6106 [Moral Turpitude – Misrepresentation]**

By concealing his suspended status from Gentry, respondent committed an act involving moral turpitude, dishonesty, or corruption, in willful violation of section 6106.

**c. Count Eight – Section 6106 [Moral Turpitude – Misappropriation]**

By misappropriating the \$215 in advanced costs received from Rixey, respondent committed an act involving moral turpitude, dishonesty, or corruption, in willful violation of section 6106.

**E. The YRB Magazine Matter (Case No. 09-O-11569)**

**1. Findings of Fact**

On or about October 9, 2007, Herbert J. Battise III (“Battise”), an accountant employed by YRB Magazine, employed respondent to represent YRB Magazine in handling debt collection work for a contingency fee.

On or about October 31, 2007, respondent agreed to represent YRB Magazine in collecting an account owed by Frank Fuller Classic Co. Thereafter, respondent did not file any civil action on behalf of YRB Magazine against Frank Fuller Classic Co.

On or about January 7, 2008, respondent informed Battise by telephone that he had filed a civil action against Frank Fuller Classic Co., but respondent did not provide any proof of the filing despite Battise’s request for copies of the documents. On or about April 23, 2008, respondent informed Battise that the defendant had been served and a response was due on or about May 10, 2008. On or about May 28, 2008, respondent informed Battise that he would send discovery requests to the defendant. On or about July 2, 2008, respondent informed Battise by telephone that he had received discovery responses and that a case management conference was scheduled for on or about July 24, 2008.

On or about January 29, 2008, respondent received a file from Battise for the account of Teshub. Thereafter, respondent did not file a civil action on behalf of YRB Magazine against Teshub.

On or about March 28, 2008, respondent informed Battise that he had filed a civil action on behalf of YRB Magazine against Teshub and had not yet received a court date, but respondent did not provide any proof of the filing despite Battise's request for copies of the documents. On or about July 2, 2008, respondent informed Battise that Teshub had not yet been served with the complaint.

On or about January 29, 2008, respondent received a file from Battise for the account of Elwood Clothing. Thereafter, respondent did not file any civil action against Elwood Clothing on behalf of YRB Magazine.

On or about March 10, 2008, respondent informed Battise by telephone that he had filed a civil action against Elwood Clothing on behalf of YRB Magazine, but respondent did not provide any proof of the filing despite Battise's request for copies of the documents. On or about May 28, 2008, respondent informed Battise that he had received a response from Elwood Clothing and would request discovery. On or about July 2, 2008, respondent informed Battise by telephone that a case management conference was set in the Elwood Clothing case for on or about August 18, 2008.

When respondent spoke to Battise on or about July 2, 2008, and informed Battise of the status of the various collection cases, respondent was not entitled to practice law in California. At no time did respondent inform Battise or YRB Magazine that he was not entitled to practice law. Thereafter, Battise had no further communications with respondent.

In or about August 2008, respondent closed his law office and ceased communications with Battise.

When respondent informed Battise that he had filed civil actions on behalf of YRB Magazine against Frank Fuller Classic Co., Teshub, and Elwood Clothing; that he had received discovery; and that there were court appearances scheduled; respondent knew that he had not filed those actions, that he had not received any discovery, and that no court dates were scheduled. Respondent made misrepresentations to conceal his inaction on the YRB cases.

When respondent spoke to Battise on or about July 2, 2008, respondent held himself out as entitled to practice law when he knew that he was suspended from the practice of law in California and did so to conceal his status from Battise.

During the period from in or about December 2007 through April 2008, YRB Magazine paid respondent \$910 in costs for filing fees and service of documents. Respondent did not incur any costs or expend those funds on behalf of YRB Magazine for filing fees and service of process. Respondent dishonestly or with gross negligence misappropriated the \$910 in costs received from YRB Magazine.

In or about August 2008, respondent vacated his office and was no longer receiving mail addressed to the address maintained on the State Bar's official membership records. Thereafter, respondent did not report to the State Bar a new address where he could be reached for State Bar purposes.

## **2. Conclusions of Law**

### **a. Count Nine – Rule 3-110(A) [Failure to Perform]**

Rule 3-110(A) provides that a member must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. By agreeing to represent YRB Magazine in collection cases and taking no action to do so despite regular communications with the client, respondent recklessly and repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A).

**b. Count Ten – Section 6068, Subdivision (a) [Failure to Comply with Laws – Unauthorized Practice]**

By communicating with Battise about the collection cases for YRB Magazine without informing Battise that respondent was suspended from the practice of law, respondent held himself out as entitled to practice law and practiced law in willful violation of section 6125 and 6126, and thereby failed to comply with the laws of the State of California, in violation of section 6068, subdivision (a).

**b. Count Eleven - Section 6106 [Moral Turpitude – Misrepresentation]**

By misrepresenting to Battise that he had filed civil actions on behalf of YRB Magazine when he had not done so and by concealing his suspended status from Battise, respondent committed acts involving moral turpitude, dishonesty, or corruption, in willful violation of section 6106.

**c. Count Twelve – Section 6106 [Moral Turpitude – Misappropriation]**

By misappropriating \$910 in costs received from YRB Magazine, respondent committed an act involving moral turpitude, dishonesty, or corruption, in willful violation of section 6106.

**d. Count Thirteen – Section 6068, Subdivision (j) [Failure to Update Membership Address]**

Section 6068, subdivision (j) provides that it is the duty of an attorney to comply with the requirements of section 6002.1. Section 6002.1 requires, in part, that members maintain, on the official membership records of the State Bar, their current office address;<sup>6</sup> and in the event that a member's address changes, the member must notify the membership records office of the State Bar within 30 days. By failing to update his address with the State Bar, respondent willfully violated section 6068, subdivision (j).

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<sup>6</sup> If the member does not maintain an office, then they are required to list the address to be used for State Bar purposes.

### **III. Mitigating and Aggravating Circumstances**

#### **A. Mitigation**

No mitigating factors were submitted into evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)<sup>7</sup> Respondent, however, has no prior record of discipline in 17 years of practice prior to engaging in his first act of misconduct in the current proceeding.<sup>8</sup> Practicing law for 17 years before committing misconduct is entitled to some weight in mitigation. (Std. 1.2(e)(i).)

#### **B. Aggravation**

The court finds two factors in aggravation. (Std. 1.2(b).)

##### **1. Multiple Acts**

Respondent was found culpable of thirteen acts of misconduct. Multiple acts of misconduct are an aggravating factor. (Std. 1.2(b)(ii).)

##### **2. Significant Harm**

Respondent's misconduct resulted in significant financial harm to his clients. (Std. 1.2(b)(iv).) Said harm includes his failure to refund \$750 in unearned fees to Bayview and his misappropriation of a total of \$1,480 in advanced costs to Bayview, Rixey, and YRB Magazine.

### **IV. Discussion**

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

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<sup>7</sup> All further references to standard(s) are to this source.

<sup>8</sup> Pursuant to Evidence Code section 452, subdivision (h), the court takes judicial notice of respondent's membership records.

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline. If two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed must be the most severe of the applicable sanctions. (Std. 1.6(a).)

Standards 2.2(a), 2.2(b), and 2.3, among others, apply in this matter. The most severe sanction is found at standard 2.2(a) which recommends disbarment for willful misappropriation of entrusted funds unless the amount misappropriated is insignificantly small or unless the most compelling mitigating circumstances clearly predominate, in which case the minimum discipline recommended is one year actual suspension.

The Supreme Court gives the standards “great weight” and will reject a recommendation consistent with the standards only where the court entertains “grave doubts” as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) The standards are not mandatory; they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

The Office of the Chief Trial Counsel recommends that respondent be suspended for five years, stayed, with two years’ actual suspension and until he makes restitution and establishes his fitness to practice law. The Office of the Chief Trial Counsel’s recommendation was based on *Farnham v. State Bar* (1976) 17 Cal.3d 605; *Chasteen v. State Bar* (1985) 40 Cal.3d 586; *Morgan v. State Bar* (1990) 51 Cal.3d 598; and *Boehme v. State Bar* (1988) 47 Cal.3d 448.

In addition to the case law cited by the Office of the Chief Trial Counsel, the court is also guided by *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389. In *Boyne*, the attorney’s misconduct involved: (1) abandonment or failing to provide services in four

matters; (2) failing to return unearned fees in three matters; (3) failing to communicate in three matters; (4) failing to pay court-ordered sanctions in two matters; (5) the misappropriation of \$153 in advanced costs; (6) improperly securing a large loan from a client; and (7) failing to cooperate with the State Bar. In mitigation, the attorney was active in community activities and had no prior record of discipline in over 20 years of practice before the aforementioned misconduct. In aggravation, the attorney committed multiple acts of misconduct, caused significant client harm, and demonstrated sporadic participation in the State Bar proceedings. The Review Department of the State Bar Court recommended that the attorney be suspended from the practice of law for five years, stayed, with five years' probation including, among other things, a two-year minimum period of actual suspension.

The present matter shares many similarities with *Boyne*. Consequently, the court agrees with the Office of the Chief Trial Counsel's recommendation that respondent, among other things, be suspended from the practice of law for a minimum of two years.

## **V. Recommended Discipline**

The court recommends that **Anthony Allen Brock**, State Bar number 149768, be suspended from the practice of law in California for five years, execution of that period of suspension to be stayed subject to the following conditions:

1. Anthony Allen Brock is suspended from the practice of law for a minimum of two years, and he will remain suspended until the following requirements are satisfied:
  - i. He makes restitution to Bayview Acquisitions, LLC, in the amount of \$1,105 plus 10% interest per annum from July 1, 2008 (or to the Client Security Fund to the extent of any payment from the fund to Bayview Acquisitions, LLC, plus interest and costs, in accordance with Business and Professions Code section 6140.5), and furnishes satisfactory proof thereof to the State Bar's Office of Probation;<sup>9</sup>

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<sup>9</sup> Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

- ii. He makes restitution to J. Barbour Rixey in the amount of \$215 plus 10% interest per annum from July 28, 2008 (or to the Client Security Fund to the extent of any payment from the fund to J. Barbour Rixey, plus interest and costs, in accordance with Business and Professions Code section 6140.5), and furnishes satisfactory proof thereof to the State Bar's Office of Probation;
- iii. He makes restitution to YRB Magazine in the amount of \$910 plus 10% interest per annum from July 1, 2008 (or to the Client Security Fund to the extent of any payment from the fund to YRB Magazine, plus interest and costs, in accordance with Business and Professions Code section 6140.5), and furnishes satisfactory proof thereof to the State Bar's Office of Probation;
- iv. The State Bar Court grants a motion to terminate his suspension pursuant to rule 205 of the former Rules of Procedure of the State Bar. Anthony Allen Brock must comply with the conditions of probation, if any, imposed by the State Bar Court as a condition for terminating his suspension; and
- v. He must also provide proof to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law before his suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)

The court also recommends that Anthony Allen Brock be ordered to comply with California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.<sup>10</sup> Failure to do so may result in disbarment or suspension.

It is further recommended that Anthony Allen Brock be ordered to take and pass the Multistate Professional Responsibility Examination given by the National Conference of Bar Examiners and provide proof of passage to the Office of Probation during the period of his actual suspension.

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<sup>10</sup> Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

## **VI. Costs**

It is recommended that costs be awarded to the Office of the Chief Trial Counsel in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: April \_\_\_\_\_, 2011

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RICHARD A. HONN  
Judge of the State Bar Court